

TREASURY-TAXATION  
DIVISION OF TAXATION

An Act to Regulate the Retail Sale of Motor Fuels  
Proposed New Rules: N.J.A.C. 18:19

Authorized By: Robert K. Thompson, Director, Division of Taxation

Authority: N.J.S.A. 56:6-6

Calendar Reference: See Summary below for an explanation of rulemaking calendar exception.

Proposal Number: PRN 2004

Submit comments by October 15, 2004 to:

Nicholas Catalano  
Chief, Regulatory Services  
Division of Taxation  
50 Barrack Street  
P.O. Box 269  
Trenton NJ 08695-0269

The agency proposal follows:

### Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:19 expired on February 16, 2004. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to adopt these expired rules as new rules without change at this time.

The Act to Regulate the Retail Sale of Motor Fuels was enacted into law as P.L. 1938, c. 163 and became effective June 1, 1938. The statute protects the interest of motorists and of the retail dealers themselves in attempting to facilitate and safeguard the orderly distribution and marketing of motor fuels. The rules pursuant to the retail sales statute have been updated and revised periodically through internal agency review as required by changes in legislation and changes in the regulatory environment.

Over the course of time, the need to significantly update the Motor Fuels Tax Statute and the Act to Regulate the Retail Sale of Motor Fuels became obvious. The New Jersey Commission of Investigation issued a report, dated February, 1992, entitled Motor Fuel Tax Evasion. It detailed and analyzed some of the weaknesses of the then current system. Shortly afterward, on June 22, 1992, P.L. 1992, c.23 was enacted. It resulted in major revisions to the collection and enforcement procedures of the Motor Fuels Tax Act, and The Act to Regulate the Retail Sale of Motor Fuels.

As a result of that statutory action, major amendments to the rules were proposed in order to conform them to the legislative action, 26 N.J.R. 4512(a) (November 21, 1994). These rules were adopted in 27 N.J.R. 535(a) (February 6, 1995).

In addition, P.L. 1995, c.51 was approved March 17, 1995. That statutory change permitted a rebate in the purchase of motor fuels with respect to credits earned through purchases on a credit card. As a result N.J.A.C. 18:19-2.3 was updated by 29 N.J.R. 2639(a), 29 N.J.R. 3855(a) to conform the rules to the statute.

N.J.A.C. 18:19 is summarized as follows:

Subchapter 1, General Provisions, supplies definitions of words and phrases used in the rules.

Subchapter 2, Posted Prices; Advertising; Rebates; Allowances and Prizes; Trademarks, provides guidelines for price signs, display of trade names, gifts, and certain advertising requirements.

Subchapter 3, Preparation of Fines, supplies guidelines concerning violations and penalties and the procedure for collection of penalties.

Subchapter 4, Records Required, deals with records required to be kept by retail dealers.

Subchapter 5, Powers of the Director, deals with the authority of the Director to seek injunctions, conduct audits and investigations and otherwise enforce the statute.

Subchapter 6, Crime, details the elements of the crime of the fourth degree committed by altering or manipulating a totalizer.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)(5).

### Social Impact

The Motor Fuels Retail Sales rules were adopted to provide motorists, oil companies and retail dealers of motor fuels with guidance and assistance in the administration of the Act to Regulate Retail Sales of Motor Fuels. The statute and the rules pursuant to it reflect a balancing of various interests including the motorists' right to know the price of fuels available, and the prevention of potentially destructive competition between and among motor fuels dealers.

The marketing of motor fuels is highly price sensitive, and patterns of demand change quickly after a change in price is made by a dealer. In this context, efforts have been made to maintain orderly sales practices.

### Economic Impact

The readoption of the rules pursuant to the Act to Regulate the Retail Sale of Motor Fuels will continue to provide for the orderly marketing of motor fuels in New Jersey and thus directly affect the economy of the State and region. One consideration in formulating the rules has been to keep mandatory signage to the minimum consistent with the objective of providing clear price information to the motorist about the fuels available at a particular facility. Because the Legislature has determined that regulation of the sale of motor fuels is in the public interest, these rules implement and carry out the legislative purposes in a manner consistent with such public purpose.

### Jobs Impact

The rules being repropose will not result in the creation or loss of jobs and are not expected to have any independent effect on jobs in this state.

### Federal Standards Statement

A Federal standards analysis is not required because state regulation of the retail sales of motor fuels is not subject to Federal regulatory standards. The administration of rules addressing these issues at the state level is an independent and separate jurisdiction.

### Agriculture Industry Impact

The rules being repropose will have no impact on the agricultural industry that would change the status quo treatment for that industry.

### Regulatory Flexibility Statement

The rules proposed for readoption apply to all taxpayers subject to the statutory provisions regulating the trade practices of retail sales of motor fuels, whether or not they are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules were promulgated pursuant to N.J.S.A. 56:6-1 et seq., which places certain trade practice requirements on retail sellers of motor fuels, such as requirements of and on the display of prices.

The proposed readoption imposes no new reporting, recordkeeping, or other compliance requirements. No accounting or other professional services are needed for a business to comply with the requirements of the rules. The rules relate to trade practices, such as display of signs, pricing, advertising, rebates, allowances and prizes, and contain design as well as performance requirements. Each taxpayer is free to choose to make expenditures or to retain the services of a professional, in the process of complying with the rules, and costs would be based on such choices. The rules are intended to benefit sellers of motor fuels by providing for fair trade practices in the sale of motor fuels.

#### Smart Growth Statement

The Division anticipates that the rules proposed for readoption will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the expired rules proposed as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 18:19.